



4910-9X

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 250, 254 and 383

RIN: 2105-AE39

[Docket DOT-OST-2015-0104]

Revisions to Denied Boarding Compensation, Domestic Baggage Liability Limits, and Civil Penalty Amounts

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In accordance with existing regulations, this final rule raises the maximum denied boarding compensation (DBC) amounts that have been in effect since August 2011, raising the maximum DBC amounts from the current figures of \$650/\$1,300 to \$675/\$1,350. Also, in accordance with existing regulations, this final rule raises the minimum liability limit air carriers may impose for mishandled baggage in domestic air transportation, adjusting the minimum limit of liability from the current amount of \$3,400 to \$3,500. To account for inflation, this rule also raises the maximum civil penalties that can be assessed as a result of DOT aviation enforcement actions for violations of certain economic provisions of Title 49 of the U.S. Code from \$2,500 to \$2,750.

DATES: This rule is effective on [INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Revision of maximum denied boarding compensation amounts

In its rule “Enhancing Airline Passenger Protections” (76 FR 23110, Apr. 25, 2011), the Department raised the limits on denied boarding compensation (DBC) due to passengers from the previous amounts of \$400/\$800 to the current amounts of \$650/\$1,300. The rule also requires that these maximum DBC amounts be adjusted to reflect changes in the Consumer Price Index for All Urban Consumers (CPI-U). Under 14 CFR 250.5(e), the review of denied boarding compensation was to take place every 2 years, with the first such review occurring in July 2012, to coincide with our review of the baggage liability amount. Section 250.5(e) prescribes the use of a specific formula to calculate the revised maximum DBC amounts when making these periodic adjustments. The formula is below.

Current DBC limit in section 250.5(a)(2) multiplied by (a/b) rounded to the nearest \$25 where:

a = July CPI-U of year of current adjustment

b = the CPI-U figure in August 2011 when the inflation adjustment provision was added to Part 250

Section 250.5(e) specifies that the DBC limit in section 250.5(a)(3) shall be twice the revised limit for section 250.5(a)(2).

We reviewed the compensation amounts in 2012 and found that according to the formula set out in section 250.5(e), no change in the DBC amounts was called for. However, the 2014-2015 review indicated that an inflation adjustment is required. Applying the formula to consumer price index changes occurring between August 2011 (the basis month required by the formula) and July 2014,¹ the appropriate inflation adjustment is $\$650 \times 238.250/226.545$ [$\$650 \times 1.0517$], which yields \$683.60. (The base amount of \$650 in the formula was the maximum denied boarding compensation in section 250.5(a)(2)² at the time that this biennial indexing provision was added to the rule, 238.250 was the CPI-U for July 2014, and 226.545 was the CPI-U for August 2011.) Section 250.5(e) requires us to round the adjustment to the nearest \$25, or to \$675 in this case. Section 250.5(a)(3) provides that for passengers who are not rerouted to reach their destination within two hours the maximum DBC amount is twice the amount provided by section 250.5(a)(2); therefore, under the formula adjustment, this amount is twice \$675, or \$1,350.

In this final rule, we are also correcting an editorial error in section 250.5(e).

When issuing the 2011 final rule prescribing the formula for inflation adjustment for

¹ The next review of the denied boarding compensation amounts will occur after the CPI-U for July 2016 is released.

² 14 CFR 250.5(a)(2) provides that the maximum amount of DBC is \$650 for passengers who are denied boarding involuntarily on a domestic flight by a carrier who offers alternate transportation that is planned to arrive at the passenger's first stopover or final destination more than one hour but less than two hours after the planned arrival time of the passenger's original flight. 14 CFR 250.5(a)(3) provides that the maximum amount of DBC is \$1,300 for passengers who are denied boarding involuntarily on a domestic flight by a carrier who offers alternate transportation that is planned to arrive at the passenger's first stopover or final destination more than two hours after the planned arrival time of the passenger's original flight.

DBC limits, we inadvertently referred only to section 250.5(a) for involuntary denied boarding on domestic flights and omitted section 250.5(b)³ for involuntary denied boarding on international flights outbound from U.S. airports. We intend to apply the periodic inflation adjustment to both sections because the inflation adjustment is applicable to “DBC limits” without distinguishing domestic and international flights as noted by the Department in the preamble to the 2011 final rule. We are correcting this error by adding another paragraph to this rule, section 250.5(e)(3), to provide that the DBC inflation adjustment also applies to section 250.5(b) regarding passengers involuntarily denied boarding on an international flight outbound from a U.S. airport.

II. Revision of minimum domestic baggage liability limit

Part 254 of the Department’s rules (14 CFR Part 254) establishes minimum baggage liability limits that air carriers may apply to domestic air service. Section 254.6 of this domestic baggage liability limit rule requires the Department to review every two years the minimum limit of liability prescribed in Part 254 in light of changes in the CPI–U and to revise the limit of liability to reflect changes in that index as of July of each review year. Section 254.6 prescribes the use of a specific formula to calculate the revised minimum liability amount when making these periodic adjustments. The formula is below.

$\$2500 \times (a/b)$ rounded to the nearest \$100 where:

a = July CPI–U of year of current adjustment

³ 14 CFR 250.5(b)(2) addresses DBC on outbound international flights. The provision is identical to section 250.5(a)(2) [see footnote 2] except that the threshold for alternate transportation at which the DBC limit doubles from \$650 to \$1,300 is four hours rather than two hours.

b = the CPI-U figure in December 1999 when the inflation adjustment provision was added to Part 254.

The application of the formula during the 2012 review of the minimum domestic baggage liability limit raised the amount from \$3,300 to the current amount of \$3,400. The 2014-2015 review indicates that another inflation adjustment is required. Applying the formula using the consumer price index changes occurring between December 1999 (the basis month required by the formula) and July 2014,⁴ the appropriate inflation adjustment is $\$2,500 \times 238.250 / 168.30$ [$\$2,500 \times 1.4156$], which yields \$3,539.07. (The base amount of \$2,500 in the formula was the minimum liability limit in Part 254 at the time that this biennial indexing provision was added to the rule, 238.250 was the CPI-U for July 2014, and 168.30 was the CPI-U for December 1999.). Section 254.6 requires us to round the adjustment to the nearest \$100, or to \$3,500 in this case.

III. Revision of maximum civil penalties

The maximum civil penalty amounts for violations of aviation economic and consumer rules and statutes administered by the Department appear in 14 CFR Part 383. The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410) provides a detailed formula on how Federal monetary civil penalties should be adjusted for inflation. The Debt Collection Improvement Act of 1996 (Pub. L. 104-134, sec. 31001) requires each agency to adjust monetary civil penalties within its jurisdiction at least once every four years. It also limits the initial adjustment to a civil penalty pursuant to the 1996 Act to no more than 10 percent of such penalty. The adjustment is based on

⁴ Similar to the DBC adjustment, the next review of the domestic baggage liability limit will occur after the CPI-U for July 2016 is released.

changes to the CPI-U from June of the year when these civil penalties were last adjusted to June of the year prior to the current adjustment.

Notwithstanding the formula provided by the 1990 Act, the civil penalty amounts in Part 383 were set by Vision 100--Century of Aviation Reauthorization Act (Pub. L. 108-176; 117 Stat. 2490, December 12, 2003). Subsequently, these civil penalty amounts were reviewed by the Department in 2008. In a final rule issued on November 21, 2008, the Department adjusted three of the five civil penalties under Part 383: raising the general civil penalty from \$25,000 to \$27,500; raising the general civil penalty for small businesses or individuals from \$10,000 to \$11,000; and raising the civil penalty for violations of section 41719 and rules and orders issued under that section from \$5,000 to \$5,500. According to the formula provided by the 1990 Act, the comparison between the CPI-U index for June 2008 and June 2014 results in an inflation factor of 1.089. This current review determines that none of the three civil penalties that were raised in 2008 are due for another increase.

The current review also determines that only one of the two civil penalties that were set by Vision-100 in 2003, and were not raised in 2008, is due for an increase. The comparison between the CPI-U index for June 2003 (the year when these two civil penalties were last set by Vision-100) and June 2014 results in an inflation factor of 1.297. As such, the current \$2,500 maximum civil penalty amount is raised to \$2,750 for violations of section 41712 or consumer protection rules or orders by small businesses and individuals (\$2,500 multiplied by the inflation factor of 1.297 which results in a raw increase of \$742.50, rounded to the nearest \$1,000 then capped by the 10 percent increase limitation for the initial adjustment under the 1990 Act.)

IV. Regulatory Analyses and Notices

The Administrative Procedure Act (APA) (5 U.S.C. 553) contains a “good cause” exemption which allows agencies to dispense with notice and comment if those procedures are impracticable, unnecessary or contrary to the public interest. We have determined that under 5 U.S.C. 553 (b)(3)(B) good cause exists for dispensing with a notice of proposed rulemaking and public comment for the inflation adjustments herein as the application of this rule does not involve any agency discretion. Those adjustments are simply a ministerial inflation update based on the terms and formulas set by 14 CFR 250.5, as most recently amended in 76 FR 23110 (April 25, 2011), and by 14 CFR 254.6, as most recently amended in 73 FR 70591 (November 21, 2008). Those formulas were subject to notice and comment in the rulemaking proceedings during which they were added to these baggage liability and oversales rules. Similarly, the clarification of the applicability of the inflation adjustment provision in section 250.5(e) to international transportation simply corrects an incomplete internal citation in the rule text where the Department’s intent as expressed in the preamble to the 2011 rule was clear. The adjustment to a certain civil penalty is also a ministerial action required by the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Debt Collection Improvement Act of 1996, and it is based on a statutory formula. Accordingly, we find that prior notice and comment are unnecessary, and we are issuing these revisions to Parts 250, 254, and 383 as a final rule.

This final rule will become effective with respect to transportation taking place on [INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. This means that any compensation due to passengers in instances of involuntary denied

boarding, or any compensation due to domestic passengers because of loss, delay or damage to baggage, with respect to transportation taking place on or after the effective date (as opposed to tickets sold on or after the effective date) will be covered by this final rule. All notices to passengers required by the rules (Part 250 and Part 254) as they pertain to the new maximum DBC amounts and domestic baggage liability limit must be updated by the effective date of this final rule. The increased maximum civil penalty amount will become applicable to all violations that occur on or after the effective date of this final rule.

V. Executive Order 12866

This final rule has been evaluated in accordance with existing policies and procedures and is considered not significant under both Executive Order 12866 and DOT's Regulatory Policies and Procedures; therefore, the rule has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Denied Boarding Compensation

The revision of 14 CFR Part 250 provides for an inflation adjustment to the maximum DBC amounts that air carriers and foreign air carriers are required by 14 CFR 250.8 to tender to passengers who are involuntarily denied boarding. The provisions are required by current regulatory language, and require no exercise of discretion or interpretation.

This rule will pose minor additional costs to airlines only in those instances in which carriers oversold a flight, there was not a sufficient number of passengers who volunteered to give up their seats, and the carriers failed to arrange alternative transportation for passengers denied boarding that is scheduled to transport them to the

next destination within a certain number of hours. The maximum potential impact in those instances is \$25-\$50 per affected passenger, depending on the delay in getting the passenger to the next destination and whether the flight is a domestic flight or outbound international flight. Reports filed each quarter with the Department by U.S. airlines that each account for at least one percent of total domestic scheduled-service passenger revenues show that, in 2013, approximately 0.0092 percent (.000092) of passengers transported on their scheduled domestic and outbound international flights were involuntarily denied boarding. The total number of domestic and international outbound scheduled passenger enplanements for those carriers in 2013 was 620.5 million. This means that approximately 57,000 passengers experienced involuntarily denied boarding last year on domestic or international outbound scheduled flights operated by these U.S. carriers (.000092 multiplied by 620.5 million). As the Department does not have a rule requiring foreign air carriers to report the number of passengers on their U.S.-outbound international flights who were involuntarily denied boarding, we do not have statistics on that number. However, the total 2013 annual enplanements for international outbound flights operated by foreign carriers is 41.7 million. Using the same rate of involuntarily denied boarding for U.S. carriers (0.0092 percent), the estimated number of passengers who were involuntarily denied boarding from foreign carrier-operated outbound international flights for 2013 is approximately 3,800. Therefore, we expect that the increase in the maximum DBC amounts will cost the affected carriers (both U.S. and foreign air carriers) no more than \$3.04 million a year based on 60,800 total affected passengers (57,000 plus 3,800) multiplied by the maximum increase of \$50 per passenger. The actual cost will be significantly less than that, since many passengers

who are involuntarily denied boarding qualify for less than the maximum amount of DBC and their compensation will not be affected by this increase in the limits. There would be a benefit to passengers for the same amount.

Domestic Baggage Liability

The revision of 14 CFR 254.4 provides for an inflation adjustment to the amount of the minimum limit on baggage liability that air carriers may assert in cases of mishandled baggage, as required by section 254.6. The provisions are also required by current regulatory language, without interpretation.

This rule will pose minor additional costs to airlines only in those instances in which carriers lose, damage or delay baggage and where the amount of the passenger's claim in those instances exceeds the prior minimum liability limit of \$3,400. The maximum potential impact in those instances is \$100 on each such claim. Reports filed each month with the Department by U.S. airlines that each account for at least one percent of total domestic scheduled-service passenger revenues show that, in 2013, approximately 0.3 percent (.003) of domestic passengers of these carriers experienced a mishandled bag. The total number of domestic scheduled passenger enplanements for these carriers in 2013 was 590.8 million. This means that approximately 1.77 million domestic scheduled passengers experienced a mishandled bag last year (.003 multiplied by 590.8). However, the vast majority of the instances of mishandled baggage do not result in a claim in an amount that is affected by the liability limit in this rule. Based on the information provided to us in 2013 by several carriers, we believe a little more than one half percent (0.0058) of the domestic passengers who experience a mishandled bag would benefit from an increase in the minimum limit on baggage liability, i.e., about

10,266 passengers per year. Therefore, we expect that there would be a cost to the airline industry of a little over \$1 million each year — the number of domestic passengers who have a baggage claim that exceeds the prior minimum liability limit of \$ 3,400 (10,266 passengers) multiplied by the maximum potential impact in those instances (\$100). There would also be a benefit to passengers for the same amount. Since the rule is limited to domestic transportation, it does not affect foreign air carriers.

Civil Penalties

The increase of the maximum civil penalty will impact entities and individuals that are found to be in violation of section 41712 and consumer protection rules and orders. There is no direct cost to any regulated entity or individual unless the entity or individual is found to have committed a violation.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612) requires an assessment of the impact of proposed and final rules on small entities unless the agency certifies that the proposed regulation will not have a significant economic impact on a substantial number of small entities. An air carrier or a foreign air carrier is a small business if it provides air transportation only with small aircraft (i.e., aircraft with up to 60 seats/18,000 pound payload capacity). See 14 CFR 399.73. The revisions of the DBC and baggage liability amounts principally affect flight segments operated with large aircraft. As a result, many operations of small entities, such as air taxis and many commuter air carriers, are not covered by the rule. Moreover, any additional costs for small entities associated with the rule would be minimal and, in the case of baggage liability, may be covered by insurance.

The revision of the civil penalty amount will raise potential penalties for individuals and small businesses with regard to violations of section 41712 or consumer protection rules and orders. Because the maximum civil penalty amount is only increased by \$250 from the current amount, the aggregate economic impact of this rulemaking on small entities should be minimal and would only be borne by those entities found in violation of the regulations.

Accordingly, I hereby certify that this action will not have a significant economic impact on a substantial number of small entities.

VII. Paperwork Reduction Act

This final rule imposes no new reporting or record keeping requirements necessitating clearance by OMB.

List of Subjects

14 CFR Part 250

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

14 CFR Part 254

Air carriers, Administrative practice and procedure, Consumer protection, Transportation.

14 CFR Part 383

Administrative practice and procedure, Penalties.

Accordingly, the Department of Transportation amends 14 CFR Parts 250, 254, and 383 as follows:

PART 250 — OVERSALES

1. The authority citation for part 250 continues to read as follows:

Authority: 49 U.S.C. 329 and chapters 41102, 41301, 41708, and 41712.

2. Section 250.5 is amended by:

- a. Removing “\$650” wherever it appears and adding “\$675” in its place.
- b. Removing “\$1,300” wherever it appears and adding “\$1,350” in its place.
- c. Adding a new paragraph (e)(3) to read as follows:

§ 250.5 Amount of denied boarding compensation for passengers denied boarding involuntarily.

* * * * *

(e) * * *

(3) The Denied Boarding Compensation limit in paragraph (b)(2) shall be the same as the revised limit for paragraph (a)(2) of this section, and the Denied Boarding Compensation limit in paragraph (b)(3) shall be twice the revised limit for paragraph (a)(2) of this section.

* * * * *

§ 250.9 [Amended]

3. Section 250.9 is amended by removing “\$650” wherever it appears and adding “\$675” in its place and by removing “\$1,300” wherever it appears and adding “\$1,350” in its place.

4. The authority citation for part 254 continues to read as follows:

Authority: 49 U.S.C. 40113, 41501, 41504, 41510, 41702 and 41707.

§ 254.4 [Amended]

5. Section 254.4 is amended by removing “\$3,400” and adding “\$3,500” in its place.

§ 254.5 [Amended]

6. Section 254.5(b) is amended by removing “\$3,400” and adding “\$3,500” in its place.

PART 383 — CIVIL PENALTIES

8. The authority citation for part 383 continues to read as follows:

Authority: Sec. 503, Public Law 108-176, 117 Stat. 2490; Public Law 101-410, 104 Stat. 890; Public Law 104-134 §31001.

§ 383.2 [Amended]

9. Section 383.2(b)(3) is amended by removing “\$2,500” and adding “\$2,750” in its place.

Issued in Washington, D.C. on May 18, 2015 pursuant to authority delegated in 49 CFR 1.27(c) and (n).

Kathryn B. Thomson,

General Counsel.

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